

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MARY ANN WISDOM-GUERRA**

Claimant

VS.

## NORRELL TEMPORARY SERVICE

Respondent

AND

# TRANSPORTATION INSURANCE COMPANY

Insurance Carrier

Docket No. 184,103

## ORDER

Claimant appeals from an Award entered by Administrative Law Judge John D. Clark on March 25, 1996. The Appeals Board heard oral argument August 8, 1996.

## APPEARANCES

Claimant appeared by her attorney, Randy S. Stalcup of Wichita, Kansas. The respondent and its insurance carrier appeared by their attorney, Kurt W. Ratzlaff of Wichita, Kansas.

## RECORD AND STIPULATIONS

The Appeals Board has reviewed the record listed in the Award. The Appeals Board has also adopted the stipulations listed in the Award.

## ISSUES

The sole issue to be considered on appeal is the nature and extent of claimant's disability.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board finds the Award entered by the Administrative Law Judge for a 2 percent permanent partial disability should be affirmed.

Claimant injured her shoulder on February 18, 1993, while moving pallets. At the time she was working for respondent Norrell but assigned to Hays Lumber. She was initially treated by Dr. Daniel V. Lygrisse then referred to Dr. Robert Eyster. He diagnosed rotator cuff tendinitis and gave claimant a cortisone injection. Claimant continued to work during the period of treatment by Dr. Eyster. She was laid off in March of that year and did not work again until July 1993 when she went to work for her mother cleaning residential properties. She testified the work for her mother involved the use of vacuum sweepers and carrying buckets weighing up to 15 pounds. The use of her shoulder constantly made the shoulder sore and the arm go numb. She worked for her mother approximately three weeks and then worked for approximately six weeks for Good Samaritan as a painter. She used rollers, paint brushes, and moved five-gallon buckets of paint. This work, likewise, caused pain in her arm and shoulder.

Dr. Eyster continued to treat claimant after she returned to work for her mother and Good Samaritan. He performed surgical decompression of the shoulder in March of 1994.

The record includes opinions from two physicians relating to the nature and extent of claimant's disability. Dr. Eyster testified that, in his opinion, claimant sustained a 4 percent permanent partial general body impairment of function. He attributes 2 percent of this to the injury while working for respondent and 2 percent to the subsequent employment. Dr. Daniel D. Zimmerman examined the claimant on March 9, 1995, and he rates claimant's impairment at 25 percent to the upper extremity or 15 percent of the whole person. Given a hypothetical question he stated he did not believe claimant's subsequent work caused any permanent aggravation of claimant's injury.

The Appeals Board finds the opinion of Dr. Eyster more persuasive in this case. Dr. Eyster had the opportunity to examine and treat claimant after the injury with respondent and before her work with Good Samaritan. He also saw the claimant after the employment with Good Samaritan. Dr. Zimmerman, on the other hand, did not see claimant until approximately a year after the surgery. Also, Dr. Eyster's opinion was that the injury was permanently aggravated by the work at Good Samaritan appears convincing in light of the fact that claimant continued her employment for respondent until the layoff.

The record does not establish a work disability for the injury which occurred in the course of employment with the respondent. Although Dr. Eyster testified that he would have limited claimant's overhead work after the injury at respondent, the opinions of the vocational experts do not give wage loss or labor market access loss opinions based upon that restriction alone. The evidence does not, therefore, establish what, if any, work disability there might have been as a result of the injury while claimant worked with the respondent.

For the above and foregoing reasons the Appeals Board finds that the Award should be limited to 2 percent permanent partial general disability based upon the opinion of Dr. Eyster. The Award by the Administrative Law Judge is, therefore, affirmed

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated March 25, 1996, is hereby affirmed.

**WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN FAVOR OF** the claimant, Mary Ann Wisdom-Guerra, and against the respondent, Norrell Temporary Service, and the insurance carrier, Transportation Insurance Co., for an accidental injury sustained on February 18, 1993.

The claimant is entitled to 0.8 weeks temporary total disability at the rate of \$167.51 per week or 134.01 followed by 414.20 weeks at \$3.35 per week or \$1,387.57 for a 2% permanent partial general body disability, making a total award of \$1,521.58.

As of August 31, 1996, there would be due and owing the claimant 0.8 weeks temporary total disability compensation at the rate of \$167.51 per week or \$134.01, followed by 183.49 weeks at the rate of \$3.35 in the sum of \$614.69 for a total due and owing of \$748.70 which is ordered paid in one lump sum minus any amounts previously paid. Thereafter, the remaining balance in the amount of \$772.88 shall be paid at \$3.35 per week for 230.71 weeks or until further order of the Director.

Fees necessary to defray the expenses of administration of the Workers Compensation Fund are hereby assessed against the respondent to be directly paid as follows:

Barber & Associates	
Transcript of preliminary hearing	\$122.70
Transcript of motion hearing	\$112.30
Court Reporting Service	
Deposition of Mary Ann Wisdom-Guerra	Unknown
Ireland Court Reporting	
Transcript of preliminary hearing	\$128.76
Deposition Services	
Transcript of regular hearing	\$225.90
Gene Dolginoff Associates, Ltd.	
Deposition of Daniel D. Zimmerman, M.D.	\$203.10
Satterfield Reporting Services	
Deposition of Jerry D. Hardin	\$231.50
Bannon & Associates	
Deposition of Frances Armbrust	\$156.40
Deposition of Kevin Kelley	\$118.60

Deposition of Robert Eyster, M.D.  
Deposition of Karen Crist Terrill

\$140.60  
\$147.20

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Randy S. Stalcup, Wichita, KS  
Kurt W. Ratzlaff, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director